

STATE EMPLOYMENT  
RELATIONS BOARD

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In the Matter of Factfinding

Between

IAFF Local 382

and

The City of Lakewood, OH.

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SERB Case No. 00-MED-09-0952

Before: Harry Graham

**APPEARANCES:** For IAFF Local 382:

James Astorino, President  
Northern Ohio Fire Fighters

Thomas Hanculak  
Joseph W. Diemert & Associates

Dan Herdman, President  
IAFF Local 382

For City of Lakewood:

Lawrence Mroz, Chief  
Lakewood Fire Department

Kenneth Reynolds, Director  
Lakewood Department of Industrial Relations

William Schmitz  
Johnson & Angelo

**INTRODUCTION:** Pursuant to the procedures of the Ohio State Employment Relations Board several meetings and mediation sessions were held with the parties and the neutral, Harry Graham. The initial session was conducted in February, 2001. Little progress was made in resolving the chasm separating the parties over the many issues in dispute between them. A

hearing was conducted on October 29, 2001. At that hearing the parties were provided complete opportunity to present testimony and evidence. Exhaustive documentation was supplied to the Factfinder. The record in this matter was closed at the conclusion of oral argument on October 29, 2001.

#### **ISSUE 1, AGREEMENT**

**POSITION OF THE UNION:** In the introductory text to the Agreement, preceding the Recognition article, is found a section termed "Agreement." It references "employee" and "employees." During the term of the expired Agreement the City assumed responsibility for emergency medical service formerly provided by employees of Lakewood Hospital. Those employees became City employees and were assigned to the Fire Department. They are not, and will not, become Fire Fighters. They are not included within the bargaining unit represented by IAFF Local 382. Hence, the Agreement should not refer to "members," not "employees" the Union contends.

**POSITION OF THE EMPLOYER:** The change proposed by the Union is unnecessary the Employer asserts. No problems have arisen with the current language and none are foreseeable. The City has its own proposal on the table. To the text of the first paragraph after the words "Division of Fire" it would add the words "occupying the positions of Fire Fighter, Lieutenant, Captain and Fire Marshall." It would delete the words

following the word "excluding." It would add the words "all other employees of the City." In essence, its proposal would simplify and clarify the text of the Agreement in this section according to the City.

**DISCUSSION:** Neither party made a convincing case for change in this article. No difficulties were cited in the present language. No change is recommended.

#### **ISSUE 2, RECOGNITION**

**POSITION OF THE UNION:** The City is proposing to modify the Recognition article. It seeks to delete the position of Assistant Chief from the bargaining unit. As set forth below, certain other changes are also proposed by the Employer. The Union is opposed most specifically to deletion of the Executive Assistant Chief from the bargaining unit. It asserts that if there is a question of unit clarification, it should go before the Ohio State Employment Relations Board, not a Factfinder.

**POSITION OF THE EMPLOYER:** The Recognition Article refers to limitations of the "Constitution and the laws of the United States of America, the Constitution and laws of the State of Ohio...." The City contends this is surplus verbiage and irrelevant. It proposes to delete that language and substitute "pursuant to 4417 et seq. Ohio Revised Code." It also proposes to more precisely define the bargaining unit by

adding the words "occupying the positions of Fire Fighter, Lieutenant, Captain and Fire Marshall." It would also delete words in the sentence commencing with "The City hereby recognizes..." at the words "the Fire Chief" and add the words "all other employees of the City."

**DISCUSSION:** The Union is correct to point out that whether or not the Assistant Chief should be included within the bargaining unit is a matter for the State Employment Relations Board, not a neutral. No change is recommended. A change proposed by the City does indeed clarify the terminology of the Recognition Article. References to the Constitution of the United States and Ohio do not usually appear in Labor Agreements. In the public sector in Ohio reference is commonly had to Section 4117 of the Ohio Revised Code. It is recommended that change be made. No other problems in defining the bargaining unit were demonstrated by the City and no other change in the language of Article 1 is recommended.

### **ISSUE 3, POSTING OF NOTICES**

**POSITION OF THE UNION:** As this round of negotiations developed the City had on the table a proposal to eliminate a position in the Department known as the Car 2 Driver. In spite of this unfelicitous terminology, that person has substantial responsibility for safety at a fire scene and

elsewhere in the Department. The City desires to eliminate the position of Car 2 driver. The Union opposes this proposal as well. In its view, any change in the duties performed by the Car 2 driver would compromise safety.

The Union also proposes that in Section 1 of Article 10 there be added the words "Squad 1, Squad 2 and Squad 3" to the sentence commencing with "Within ten (10) days of a company...." The parties went to arbitration over posting. Arbitrator Nels Nelson upheld the position of the Union. Addition of its proposed language would codify the Nelson decision in the Union's opinion. Further, as the City is now providing emergency medical response services, addition of the proposed posting language will serve to codify bidding opportunities within the Fire Department in the Union's view.

**POSITION OF THE EMPLOYER:** The City proposes to eliminate the phrase "and car 2 driver if any" from Article X. It also proposes to add the word "may" after the word "which" in the first sentence of the Article. In Section 4, the City proposes to be able to transfer a Paramedic who came into City service as a result of the transfer from medical service from Lakewood Hospital to the City into the Bargaining Unit represented by Local 382. The City asserts the functions presently performed by the Car 2 Driver performs tasks that could be performed by other employees. Further, maintenance

of the Car 2 driver position is costly. As the City views it, other people could perform the duties of the Car 2 driver. Permitting that person to perform other tasks, eg. clerical duties, would alleviate the financial burden associated with maintenance of the position.

At the hearing the City indicated agreement with the Union proposal to add the words "Squad 1" etc. to the Agreement.

**DISCUSSION:** At the hearing extensive testimony and evidence was received from the Union on the desirability of maintaining the Car 2 Driver position. Without reciting it in detail, the testimony from Jim Heffner of the Lakewood Fire Department and Chester Ashton, a Battalion Chief in the Cleveland Fire Department, is compelling. So too is the documentation provided by the Union concerning the position of the NFPA. Various studies were included in the Union's exhibits on this issue indicating the desirability of maintaining a Car 2 driver position. It suffices to indicate that changes of the sort sought by the Employer are not often awarded by neutrals in proceedings of the nature. Examination of the materials provided by the Union indicates beyond doubt that the Car 2 driver performs significant safety-related duties. This Factfinder is not about to disturb the longstanding provision for the Car 2 driver found in the

Agreement. No change is recommended in the existing contract language regarding provision of the Car 2 driver.

The proposal of the Union regarding incorporation of the phrase "Squad 1, Squad 2 and Squad 3" reflects the reality of the changed composition of the Department and is recommended to the parties.

#### **ISSUE 4, WAGES**

**POSITION OF THE UNION:** The Union is seeking three six (6.0%) wage increases. In support of this position it points to the relationship between the Fire Fighters and Police in Lakewood. Historically, the Fire Fighters and Police were equally paid. That changed with the expired Agreement. Police secured a greater wage increase than did Fire Fighters. That disparity should be rectified according to the Union.

Further, Fire Fighters are now performing medical response activities not previously performed by them. This is especially the case with respect to the BLS engine. Fire Fighters were assured this equipment was a last resort responder to medical emergencies. It was to run infrequently. That has not occurred. It is a first responder and has responded to hundreds of calls. As Fire Fighters are doing unanticipated duties tasks compensation is appropriate the Union contends.

The Union also proposes an increase in various sorts of

differential pay. Thus, it proposes that EMT pay increase to \$750.00 in 2001, \$1,000.00 in 2002 and \$1,250.00 in 2003. It also proposes increases in Paramedic pay to \$1,500.00 in 2001, \$2,000.00 in 2002 and \$2,500.00 in 2003. Proposed as well is differential pay for people who operate the BLS engine. Under the Union proposal this would be \$375.00 in 2001, \$500.00 in 2002 and \$625.00 in 2003. Finally, the Union proposes a differential of 15% of base pay for Lieutenants.

In support of these proposals the Union introduced extensive comparison data indicating Lakewood Fire Fighters are paid less than others in the area. Further, they are busier. This is particularly the case with the addition of medical response tasks. It is not unusual that larger than normal wage increases occur in order to "catch up" to other groups. For instance, the Union points to Lyndhurst which provided a 5.7% first-year wage increase to Fire Fighters for 2001. This was done to restore parity between the Fire Fighters and Police in Lyndhurst. That should be the case in Lakewood as well according to the Union.

Wide variation is found in paramedic pay among communities in the Cleveland metropolitan area. North Royalton and Garfield Heights pay \$1,400.00 per year. Shaker Heights pays \$3,045.00. (Figures are for 2000). When medical personnel from Lakewood Hospital were absorbed into the Fire

Department the parties negotiated EMT and Paramedic pay. Their agreement, found within the Union exhibits, reflects payments well below the going rate in the area. Thus, its proposed increases are justified the Union contends.

**POSITION OF THE EMPLOYER:** The City proposes there occur three, three and one-half percent (3.5%) wage increases. It also proposes to reduce the differential paid Lieutenants from twelve percent (12.0%) to ten percent. (10.0%). The City points out that adoption of its proposal will produce pay for Fire Fighters about \$200.00 per year above that found in comparison communities. No wage increases of the magnitude being proposed by the Union are seen anywhere in the region. Lakewood Fire Fighters are not underpaid. They compare well to others in the area.

Prior to this proceeding there occurred another Factfinding proceeding involving the Lakewood Police Department. The Factfinder, James Mancini, recommended wage increases of 4.5%, 4.0% and 4.0%. He viewed the one-half percent (.5%) increase in 2001 as payment for a change in sick leave accrual being sought by the City. Factfinder Mancini recommended adoption of the City proposal on sick leave. The extra one-half percent paid for it. Another group in City service, employees represented by AFSCME, accepted the same increases as recommended by Factfinder Mancini for

the Police Department.

Captains and Fire Marshals in Lakewood are paid twenty percent (20%) more than Fire Fighters with less than 22 years of service. A ten percent (10%) differential for Lieutenants is sensible under the circumstances the City asserts.

**DISCUSSION:** There is a pattern of wage increases for employees of the City of Lakewood. That pattern is four and one-half percent, four percent and four percent. (4.5%, 4.0% and 4.0%). It would not ordinarily be expected that a different group of employees would be able to break the pattern. Factfinder Mancini made his wage recommendation in the context of another issue in dispute between the parties, that involving sick leave. It was his view that an improvement in the longevity formula as desired by the Union and an additional .5% in the first year of the Agreement would compensate for changes he came to recommend in the sick leave article. The settlement recommended by Factfinder Mancini is a very substantial one in today's environment. It provides a large real wage increase to employees. It has been accepted by the bargaining unit represented by AFSCME. These are powerful factors arguing for its extension to the Fire Fighters.

It is recommended there occur a four and one-half percent (4.5) followed by two four percent (4.0%) wage increases. The

first increase should be retroactive to the start of the forthcoming Agreement.

The data supplied by the Union indicate without susceptibility of doubt that payment to medical response personnel, EMT's or Paramedics, is well below the going rate in the area. It is not in the ball park. Adoption of the Union proposal on this issue will vault medical personnel to the top ranks among communities providing such service in the region. Given the short existence of such service being provided by the Lakewood Fire Department that is not appropriate. All paramedics should receive an increase in their paramedic stipend so that their base pay plus the paramedic stipend will equal the base pay of police officers rounded to the nearest twenty-five dollars. At the hearing it was indicated that EMT personnel no longer provide medical service to City residents. Thus, no increase in the EMT stipend is appropriate and none is recommended.

No change is recommended in the differential pay made to Lieutenants.

The data and testimony indicate that the BLS engine is engaged in more responses than originally contemplated. It is more than a back-up in the current situation. Accordingly, staff are due compensation. At the hearing testimony was received from the Chief indicating that medical runs by the

BLS engine were now declining and were expected to decline further. Bearing that in mind, it is recommended that BLS staff receive \$375.00 as proposed by the Union for 2001. If BLS engine runs are stable, decline or increase no more than five percent in 2002 it is recommended no change occur. The same is recommended for 2003. Should runs increase more than five percent in either year it is recommended that BLS pay be increased to \$500.00 for the applicable year.

#### **ISSUE 5, ACTING PAY**

**POSITION OF THE UNION:** The Union is proposing there be hour-for-hour acting pay. That is, an Officer who is assigned to perform the duties of a higher rank receive the higher pay for each hour worked. It also proposes that in the event there is no active promotional list for Acting Captain, that the Chief would select from a Captain on the shift with no less than five years of experience who indicated a desire for the assignment. Should no Captain indicate a desire for the assignment, the Chief would make a selection from among the three most senior Captains on the shift. As the Union sees this issue, when a person steps into the Acting capacity he assumes the responsibility, hence payment should be made. The second part of the Union proposal deals with the situation when a person does not desire to function in the Acting status. It would give the Chief latitude to select among

experienced and knowledgeable officers.

**POSITION OF THE EMPLOYER:** The City proposes no change be made in the acting pay language of the Agreement. No problems have arisen and no change is warranted it asserts.

**DISCUSSION:** The City is correct. No difficulties have been shown in operation of the acting pay language. Hour-for-hour pay is not the norm. The Union has not shown the necessity for adoption of its proposal of selection for an Acting Captain. No change is recommended.

**ISSUE 6, LONGEVITY**

**POSITION OF THE UNION:** The Union asserts the longevity payments made in Lakewood are very, very low by standards seen in the area. It presently tops out at \$500.00 at 25 years of service. Comparison with nearby communities shows Lakewood to be very, very much behind. (Exhibits in Union presentation). Longevity increase is a perennial subject of negotiation. Rather than negotiate round after round, the Union proposes a percentage formula as follows:

<u>Years of Service</u>	<u>Longevity Payment</u>
5-9	2.0% of base pay
10-14	3.0% of base pay
15-19	5.0% of base pay
20+	7.0% of base pay

Adoption of a percentage method of calculating longevity pay will put to rest the continuing controversy on this issue.

**POSITION OF THE EMPLOYER:** When confronted with the dispute involving the Police Department Factfinder Mancini was required to deal with longevity. He recommended that longevity be changed to commence at \$500.00 after five years of service. It would increase at the rate of \$100.00 per year to 20 years of service. The City proposed that formula to AFSCME and it was accepted. When factoring in all compensation made to Lakewood Fire Fighters no further increase in longevity is justified according to the City.

**DISCUSSION:** No great discussion is necessary over this issue. The City position relies on the pattern established by Factfinder Mancini. The proposal of Mr. Mancini has been offered to and accepted by AFSCME. Percentage longevity formulas are unusual. The proposal of the City on this issue is recommended.

#### **ISSUE 7 UNIFORM ALLOWANCE**

**POSITION OF THE UNION:** The Union proposes the uniform allowance be increased from \$800.00 to \$1000.00 per year. No change has been made since 1995. Costs have increased. The Factfinder in the Police dispute recommended this change. It should be awarded Fire Fighters as well the Union contends.

**POSITION OF THE CITY:** The City asserts no change is justified in uniform allowance. The current payment is competitive in its opinion.

**DISCUSSION:** The uniform allowance has not changed for six years. Costs have risen. The Factfinder in the police dispute recommended \$1000.00 per year. So too does this Factfinder. The method of payment should remain unchanged.

**ISSUE 9, OVERTIME**

**POSITION OF THE UNION:** The Union points to a continuing problem with vacation utilization. Fire Fighters chose vacation many, many months prior to utilizing it. Plans are made. These may involve making travel arrangements, including deposits. On occasion the Employer has scheduled meetings and required attendance when Fire Fighters are scheduled to be on vacation. This has disrupted longstanding family plans and jeopardized monies paid for vacations. When such situations have occurred the affected people have appealed to the Chief and even the Mayor and succeeded in maintaining their vacation arrangements. The Union contends such case-by-case arrangements are faulty. Employees should have the assurance that once vacation is approved and plans made, they will not be disrupted. It has proposed language to rectify this situation. The Union also points out that all overtime is paid at time and one-half (1.5T) the hourly rate. Other City employees receive overtime at one and one-half times the 40 hour rate. The same should apply to Fire Fighters the Union asserts.

The City has on the table a proposal to alter the established call-back language in the Agreement. The Union is opposed to the proposal. It has worked satisfactorily in the opinion of the Union. No change is justified it asserts.

**POSITION OF THE EMPLOYER:** As noted immediately above, the City proposes deletion of language in Section 1 of Article VI dealing with call-back. It claims the language is costly. Contrary to the Union account of events, the City asserts that Fire Fighters have never had to disrupt vacation plans on account of call-back. Finally, the City points out that payment of overtime for Fire Fighters is very unusual. Most jurisdictions utilize the normal Fire Fighter work schedule when computing overtime payments. Lakewood has done so historically. No change is justified according to the City.

**DISCUSSION:** The record on this issue is contradictory. The Union asserts call-backs on scheduled time off are a serious problem. The Employer asserts to the contrary. The Union cited several instances where employees plans were disrupted by call-back. Several instances do not justify an alteration in contract language. It does not appear that the problem, which is real enough, is sufficiently commonplace to warrant inclusion of new contract language to deal with it. No change is recommended.

**ISSUE 10, WORKWEEK**

**POSITION OF THE UNION:** The workweek for Fire Fighters in Lakewood is presently 50.4 hours. The Union proposes it be reduced to 48 hours. Data presented by the Union demonstrate that some Fire Departments in the area work 48 hours per week. For instance, Westlake and Euclid are on that schedule. Other departments, eg. Fairview Park and Rocky River work a 49.8 hour week. At 50.4 hours per week Lakewood is uncompetitive on this issue the Union contends. The Department has sufficient staff to accommodate the change without any difficulty according to the Union. Thus, its proposal on this issue should be recommended it contends.

**POSITION OF THE EMPLOYER:** The City is opposed to the proposal of the Union. No change in the number of hours worked per week is justified it contends. Obviously, a reduction in the workweek is tantamount to a wage increase. The Employer calculates this item, standing alone, to be worth a 4.9% wage increase. Additionally, other costs such as overtime and end of career buyouts will be more expensive if the proposal of the Union is awarded. The average workweek of communities in the area, eg. Bay Village, Cleveland, Cleveland Heights, and others (in Er. Ex. F) is 49.06 hours. There is not a great deal of difference between the Lakewood workweek and the average in the area. As that is the case, no change should occur the City urges.

**DISCUSSION:** The City is correct on this issue. The cost of reducing the workweek as proposed by the Union is high. The workweek for Fire Fighters in Lakewood is modestly above the average for the region. The difference is not great. No change in the present workweek is recommended.

**ISSUE 11, EDUCATION**

**POSITION OF THE UNION:** The Union proposes that members of the Fire Department be permitted to take "any accredited college course" and be eligible for tuition reimbursement. It also proposes there be established a \$25,000.00 per year fund to reimburse for tuition expenses incurred by bargaining unit members. Adoption of this proposal will encourage employees to enroll for higher education the Union contends.

**POSITION OF THE EMPLOYER:** The City desires substantial change in this Article. It is proposing that the present payment at time and one-half (1.5T) be eliminated in certain circumstances. If the work schedule is not changed or travel to class occurs on the day when the employee was not scheduled to work, pay at the premium rate should not occur the City contends. Further, the City seeks that the Chief be able to approve incidence of certain expenses and payments as outlined in Article 8, Sections 2 and 3. The City points out that Lakewood is the only community paying at the time and one-half rate for training received during normal working

hours. Thus, its changed should be recommended it asserts.

**DISCUSSION:** The language in the Agreement is of longstanding. Both parties are seeking substantial change. The Union cannot show that its members have experienced hardship under the present language. Conversely, while the terms of the Educational Credit article are lucrative for employees, it is not shown that a hardship is being worked on the City. City Exhibit G shows a great variation among area communities with respect to education. No change in Article 8 is recommended.

**ISSUE 12, LEAVES OF ABSENCE**

**POSITION OF THE UNION:** Article 11 includes within it Section 1, A. 1 and 2 dealing with funeral leave. Sections A 1 and 2 provide different amounts of time off, depending upon the relationship of the deceased to the employee. For instance, if the deceased is a spouse, 10 calendar days off duty are granted. If the deceased is a sibling, 3 calendar days off are granted. The Union views this as being inappropriate. No distinction in funeral leave should be granted based on relationship. It proposes that those categories currently providing for three days of leave be increased to ten.

**POSITION OF THE EMPLOYER:** The City is proposing to reduce the ten calendar days off in Section 1,A,1 to five. Comparison data shows Lakewood Fire Fighters compare extraordinarily well to their counterparts in other communities on this

issue. This particular leave is the most generous in the area. Thus, some reduction is justified the City asserts.

**DISCUSSION:** Neither the Union nor the City made a persuasive case for their proposals on this issue. The ten calendar days found in Section 1, A, 1 are indeed well above average. On the other hand, the City did not show this leave worked a hardship on it. Nor did the Union show a need to increase the leave found in Section 1, A, 2. Three days are normal. No change is recommended.

#### **ISSUE 13, SICK LEAVE**

**POSITION OF THE UNION:** The Union is proposing a change in the manner in which sick leave may be used. Under its proposal, sick leave could be used in the event family members were sick. That is not presently the case. According to the Union use of sick leave in such circumstances is commonplace. As this benefit is widely accepted and is not provided to Lakewood Fire Fighters, its proposal on this issue should be recommended the Union asserts.

**POSITION OF THE CITY:** The City is proposing very substantial change to Article 12, the Sick Leave Article. In Section 2 of Article 12, the Agreement presently provides that an employee who is ill or injured supply evidence to that effect after seven (7) calendar days. The City proposes to change this to one (1) tour of duty. (Two calendar days for 40 hour

employees). It also proposes language "or, the employee is actually sick or injured and cannot work" to the final sentence of Section 2.

In Section 3, the City proposes deletion of the first sentence and substitution of "The City has a right to review the employee's physical and mental status at any time during an employee's absence to determine whether the employee is actually sick or injured of (if) the employee has the ability to return to work. The City may have the employee examined by a physician, paid by the City, to determine whether the employee is actually sick or injured.

Sections 6 and 7 of Article 12 deal with sick leave banks. The City proposes both sections be deleted. It also proposes Section 8, C and D regarding accumulation of sick leave be deleted. At Section 8, B the City proposes deletion of the existing language and substitution of: "All employees shall earn sick leave at the rate of 4.6 hours for every eighty (80) hours actually worked, and may accumulate such sick leave to two thousand four hundred (2400) hours.

In Section 9 the Employer proposes new language at the start of paragraph A. That language would read: Except for a two (2) twenty four (24) hour tour waiting period, or five eight (8) hour a day waiting period, whichever is applicable." It also proposes new language denying sick leave

to any one whose claim has been denied by Workers' Compensation. If payment had been made, the City seeks to recoup it in such circumstances by means of deduction of accumulated leave credit, starting with sick leave first. At the end of the paragraph, the City desires language to indicate that injury on duty leave shall not exceed ninety (90) days.

Section 11 provides that accumulated sick leave that is converted to cash be paid in January of each year. The City proposes that payout occur in December. (This would apply to all other payouts as well). Finally, the City proposes that "Any abused or patterned use of sick leave shall be just and sufficient cause for disciplinary action."

DISCUSSION: This issue came before Factfinder Mancini, Factfinder in the dispute between the FOP and the City. Factfinder Mancini embraced the proposal of the City. He found that the current sick leave provision in Lakewood was out-of-line in favor of employees. Factfinder Mancini recognized that adoption of the proposal of the City would represent a substantial reduction in sick leave available to police. Thus, he indicated "Furthermore, this fact-finder as previously discussed, has recommended an additional .5% wage increase in the first year as well as an increase in longevity pay to help offset the change which will occur with

respect to sick leave compensation. In effect, the increase in longevity pay, which would be nearly doubled, will compensate bargaining unit members for the loss of the fifteen sick days which they will no longer be able to accumulate under the new proposal."

As noted above, the force of pattern settlements is strong. Assuming the desirability of the four and one-half percent initial wage increase recommended by Factfinder Mancini as well as his recommended change in longevity pay, there must be a quid-pro-quo. The proposal of the City on sick leave is recommended. Currently, employees may commence sell-back of unused sick leave at 2400 hours. In order to accommodate to the change in the sick leave program recommended by Factfinder Mancini and myself, I further recommend that sick leave sell-back be permitted to commence when employees have accumulated 1500 hours under the new accumulation rate.

Factfinder Mancini recommended adoption of the proposal of the City with respect to deletion of the thirty day medical review. This Factfinder does as well. It was not shown by the City in this proceeding that there were problems with abuse or patterned use of sick leave in the Fire Department. Certainly, if such problems exist, they may be dealt with in the ordinary course of administration of

discipline. Were it to be the case that a Fire Fighter were believed to have abused sick leave and been disciplined, discipline may be protested in the grievance procedure. The proposal of the City on this issue is not recommended. No other changes are recommended in the sick leave article.

#### **ISSUE 14, VACATION**

**POSITION OF THE UNION:** The Union has an extensive proposal in the area of vacation. It seeks a more rapid accumulation of vacation time. For instance, under the Union proposal a person would reach 7.5 vacation tours at seven years of service, not 8 as is the present situation. Faster accrual is sought throughout the present vacation schedule. The Union also seeks an expansion of vacation weeks available to employees with 19 through 24 years of service and 25 or more years of service.

As the Union relates history there has been difficulty in vacation selection. In essence, vacation picks have occurred belatedly. This makes planning vacations inconvenient. To remedy this situation the Union proposes language making November 15 the cut-off date for vacation selection unless mutually agreed to the contrary.

Presently, employees hired prior to December 31, 1988 may accumulate up to twenty-two vacation tours. The Union proposes this be expanded to 28 vacation tours. Finally, the

Union alludes to a difficult situation when employees have left work, planning to go off on vacation. Something intervened and they were called-back. This is obviously a hardship on employees. Plans have been made. Family is expecting to be on vacation. That may not be the case if people are not permitted to leave on vacation. To remedy that situation, the Union proposes that a member be considered on vacation/holiday, 48 hours prior to and 48 hours after their scheduled time begins. A person on a FLSA day should be considered as being on vacation when the FLSA day is used in conjunction with a vacation day.

In support of its proposal for more rapid vacation accrual the Union points to a number of nearby communities which permit vacation time to accrue more rapidly than does Lakewood. For instance, as a generalization, Fairview Park, Bay Village, North Olmsted and Rocky River, permit vacation to accrue more rapidly than does Lakewood. To remedy this deficiency adoption of its proposal is necessary the Union asserts.

**POSITION OF THE EMPLOYER:** The City proposes new language in the vacation article that would include members of another bargaining unit, the paramedics, in the vacation picking procedure. As there are now two bargaining units in the Fire Department, such a change is necessary to accommodate the

vacation selections of all represented employees according to the City. Further, the separation of vacation time by bargaining unit, Fire Fighter and Paramedic, has lead to increased overtime costs being incurred by the City. Merger of the two groups for purposes of vacation selection will reduce such costs.

There is nothing substandard about the rate of vacation accrual for Lakewood Fire Fighters. In some communities vacation accrues more rapidly than in Lakewood. In others it accrues less rapidly. No justification is present for the change in accrual rate being sought by the Union in the opinion of the City. It urges it be rejected.

**DISCUSSION:** Lakewood is in the ballpark with respect to vacation accrual rates. The Union did not make a compelling case to speed up vacation accrual. No additional vacation is recommended by the Factfinder.

At the hearing substantial testimony was received concerning the Union proposals regarding vacation selection on November 15 yearly and consideration of an employee as being on vacation 48 hours prior to and after scheduled vacation time commences. The Union proposals on these issues are recommended. This includes consideration of an FLSA day is used in conjunction with vacation.

The data submitted by the City concerning vacation-

related overtime indicates that it is substantial. The wage increase and other changes recommended in this proceeding are substantial as well. This is particularly the case with the economy in serious recession. Given the economic current circumstances the City's position with respect to including paramedics in the vacation selection process issue is persuasive and is recommended to the parties.

#### **ISSUE 15, HOLIDAYS**

**POSITION OF THE UNION:** The Union proposes additional time off in the form of holidays. It proposes an increase as follows:

Present	156 hours
2001	168 hours
2002	180 hours
2003	192 hours

This issue is related to work hours per year. As noted in Issue 10 above, the Union proposes to reduce the number of hours worked per year. (Not recommended by this Factfinder). Not only do Lakewood Fire Fighters work more hours than others in the area, when comparison is made specifically to holidays, only Westlake has fewer holiday hours than does Lakewood. Westlake makes up for this shortcoming by paying substantially more at the base and having a shorter workweek. Further, Westlake's longevity schedule is much superior to Lakewood's.

Article 15, Section 4 provides employees may elect to receive pay or conversion to comp. time of up to 96 holiday

hours in lieu of time off. The Union proposes the 96 hour figure be increased to up to 168 hours for 2001, 180 hours for 2002 and 192 hours for 2003.

It occurs in the Fire Service that officers serve in an acting capacity. That is, they may function in a rank higher than the one they officially hold. Collective Bargaining Agreements typically deal with that situation. There is the concept of "acting pay." When there is a conjunction between serving in an acting capacity on a holiday officers should receive pay at the time and one-half (1.5T) rate for the day for all hours worked the Union proposes.

Section 6 of Article 15 provides that employees hired after January 1, 1989 must take their holiday time off in the year in which it is earned and that holidays cannot be accumulated. The Union desires this provision be deleted.

Section 7 provides that employees hired before January 1, 1989 who accumulate over thirteen (13) twenty-four (24) hour holidays forfeit the excess time over 13 holidays. The Union considers that proposal to be discriminatory. The Department is divided into two groups: those hired before and those hired after January 1, 1989. The Union urges the phrase "hired prior to January 1, 1989" be deleted from the Agreement.

**POSITION OF THE EMPLOYER:** The City proposes no change in the

holiday language. Its Exhibit K indicates that communities it regards as being comparable provide 7.9 tours of duty on average as paid holidays. The Union is seeking double that. Such a proposal is out of line in the City's view.

Since 1989 the City has attempted to eliminate the accumulation of holiday time. That is reflected in the Agreement. If the Union prevails on this issue the City will be deprived of what it gained many years ago. No change is justified the City insists.

**DISCUSSION:** Employer Exhibit K shows holiday time off duty in various communities. It shows that Lakewood Fire Fighters are somewhat below their counterparts elsewhere in the area. Employer Exhibit K indicates that Fire Fighters in Lakewood are about one holiday or one-half tour behind Fire Fighters in nearby communities. In the recently concluded AFSCME Agreement with the City time off was increased. It is recommended that holiday time be increased by one holiday or one-half tour, as applicable, in the second year of the Agreement. No additional holiday time off is recommended.

The Union is correct when it points to the problem posed by failure to pay officers in an "acting" capacity at the holiday premium rate for hours worked on a holiday. The proposal of the Union on this issue is recommended.

No other changes are recommended in the holiday article.

**ISSUE 16, MEDICAL AND OTHER INSURANCE COVERAGES**

**POSITION OF THE UNION:** Presently there is no insurance coverage for dental and eye care. The Union proposes institution of such coverages. It also proposes expansion of life insurance coverage to \$25,000.

**POSITION OF THE EMPLOYER:** In Article 16 dealing with health insurance is found the commitment of the City to maintain health insurance coverage comparable or "better than the plan benefit levels and provider networks in existence in 1998." The City desires that phrase be deleted.

The City also proposes an increase in the amount employees should pay towards drug coverage. It also proposes that it not be obligated to pay premiums for HMO coverage that is greater than that it pays towards PPO coverage. Such a provision is standard in the region and should be adopted in Lakewood the City asserts. Factfinder Mancini and the AFSCME in Lakewood have accepted the City proposals on this issue. So too should the Fire Fighters the City asserts.

The City agrees with the Union proposal to increase life insurance coverage to \$25,000.00. There is in effect in the City a survivor benefit. The City proposes to alter the format of that payment. In the opinion of the City it should be paid in the form of a AD&D insurance policy in the amount of \$125,000. Such an amount is non-taxable. That change was

recommended by Factfinder Mancini and should be recommended for the Fire Fighters as well the City contends.

**DISCUSSION:** Increase in life insurance coverage to \$25,000.00 is recommended. The survivor benefit change proposed by the City is also recommended.

The City is correct in its assertion that no community pays more for HMO health insurance premiums than for PPO coverages. Its proposal on this issue is recommended as is the increase in drug co-payments. These were recommended by Factfinder Mancini and accepted by the AFSCME in Lakewood. No other changes are recommended.

#### **ISSUE 17, GRIEVANCE PROCEDURE**

**POSITION OF THE UNION:** The City as is set forth below is proposing some changes to the grievance procedure in Article 19. The Union is opposed to any change. The system is functioning satisfactorily and no change is justified according to the Union.

**POSITION OF THE EMPLOYER:** There is presently recourse to the services of the American Arbitration Association if the parties desire to secure an arbitrator. The City proposes there be created a permanent panel in lieu of the American Arbitration Association. It also proposes that in Section 6 of Article 19 there be added language voiding a grievance if the Union fails to advance it within the prescribed time

limits. Should the City fail to answer a grievance within the prescribed time limits it would automatically be advanced to the next step under the proposal of the City.

**DISCUSSION:** Permanent panels of arbitrators are commonplace. They can serve to reduce costs and administrative time. That observation is tempered with the fact that no problems have apparently arisen with the services of the Arbitration Association. In the normal course of events it is the Union that advances a grievance to arbitration. It has been satisfied with the service provided by AAA. No change is recommended on this aspect of this issue.

The language proposed by the City with respect to advancement of grievances within the specified time limits is commonplace. It is recommended to the parties.

#### **ISSUE 18, MANAGEMENT RIGHTS**

**POSITION OF THE UNION:** No change is proposed by the Union. Nothing in the operations of the Department warrants a change it contends.

**POSITION OF THE EMPLOYER:** The City is seeking to add language at Section 3 of Article 20 that would permit it to assign work from the Fire Fighters bargaining unit to employees in the Paramedic bargaining unit. Such tasks would be those for which paramedics are trained in and capable of performing. As the City views it, this proposal is merely a clarification of

its existing authority.

**DISCUSSION:** Obviously this issue is related to the assumption of paramedic functions by the City. The proposal of the City is fraught with the potential for grievances. What are the sort of tasks paramedics have been trained in and are capable of performing? What duties currently being done by Fire Fighters will be done in future by Paramedics? If the City desires to shift some tasks from Fire Fighters to Paramedics it may attempt to do so under the current language and take its chance on protest in the grievance procedure. No change is recommended.

**ISSUE 19, PREVAILING RIGHTS**

**POSITION OF THE UNION:** Section 6 of Article 26 provides that the City be responsible for all "permit" work involving repair of buildings etc. The Union proposes to delete the word "permit." Such deletion will eliminate any confusion regarding tasks to be performed by Fire Fighters it asserts.

**POSITION OF THE EMPLOYER:** The City proposes no change. No problems have arisen and no change is justified it contends.

**DISCUSSION:** The Union did not advance a persuasive rationale to support deletion of the word "permit" from Article 26. No change is recommended.

**ISSUE 20, PRIOR SERVICE CREDIT**

**POSITION OF THE UNION:** Through the operation of the labor

market people come to be employed in the Lakewood Fire Department who may have served in other Fire Departments or with other public agencies. The Union proposes there be included language in the Agreement to provide that people in such circumstances receive credit for their prior service for purposes of vacation. Adoption of its proposal will eliminate inequity in the bargaining unit it claims.

**POSITION OF THE EMPLOYER:** The City proposes no change in the Prior Service Credit article, Article 30. Many years ago the City and Union agreed to the current language. When employees with service elsewhere came to be employed in Lakewood they knew the terms of employment with respect to vacation. No change is justified under these circumstances the City contends.

**DISCUSSION:** The City is correct on this issue. The parties reached agreement on prior service credit many years ago. Employees knew the arrangement on that benefit when they were hired. Now the Union seeks to undo its bargain. That is impermissible. No change is recommended in prior service credit.

#### **ISSUE 21, UNION LEAVES**

**POSITION OF THE UNION:** The Union is proposing to expand the amount of time available for union leave from the current three conferences per year to five. It asserts with the

changes occurring in the Department as a result of inclusion of paramedics, such change is warranted.

**POSITION OF THE EMPLOYER:** The Employer proposes no change in the amount of union leave availability. Comparability data on this issue is mixed. Some communities provide more leave, eg. Parma. Others provide less, eg. Westlake. No justification exists to provide an expansion of this benefit when the City is not shown to be substandard.

**DISCUSSION:** No change in union leave is recommended. Lakewood is neither high nor low on this particular benefit. No justification exists for its expansion.

#### **ISSUE 22, PROBATIONARY EMPLOYEES**

**POSITION OF THE UNION:** The Union proposes not to change the current language. No problems with its application to employees in probationary status have arisen and no reason exists to change it the Union asserts.

**POSITION OF THE EMPLOYER:** The City is proposing substantial change in Article 32 dealing with probationary employees. It seeks to add the phrase "or appeal to any Civil Service Commission." to Section 1, following the words "...grievance procedure." In Section 4 it proposes to delete reference to the "Lakewood Civil Service Commission" as being outmoded and no longer applicable. Finally, the City proposes there be included in Article 32 a new section, Section 7, dealing with

outside employment. Employees would be required to provide information to the Chief concerning such employment and the Chief would retain authority to deny such employment to employees were he to determine it was "in conflict with the needs and reputation of the Department.

**DISCUSSION:** The proposal of the City for change in Section 1 is reasonable. It is recommended to the parties. So too is its proposal in Section 4. The role of the Civil Service Commission in the employment relationship has diminished substantially. No reason for reference to it exists. The proposals of the City for change in Sections 1 and 4 are recommended.

It is reasonable as well that employees provide the Chief with names, addresses and phone numbers where off-duty employees at work may be located. Prudence would dictate the Department be aware of such information. Less obvious is the need of the Chief to deny off-duty employment "that may be in conflict with the needs and reputation of the Department." The potential for differing perceptions and consequently, grievances, is obvious. It is recommended that the following sentence be included in the Agreement at new Section 7 in Article 32: "All employees shall provide the Chief with the names, addresses and phone numbers of all off-duty employers."

OTHER: All tentative agreements of the parties are incorporated by reference into this report and recommended to the parties.

Signed and dated this 12<sup>th</sup> day of December, 2001 at Solon, OH.

  
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Harry Graham  
Factfinder